

## § 46.208

those articles. Likewise, if the dealer holds articles in a customs bonded warehouse on which tax has not been paid or determined, the floor stocks tax does not apply on those articles. However, if the dealer on April 1, 2009, holds articles in a customs bonded warehouse or foreign trade zone on which tax has been paid or determined pursuant to 26 U.S.C. 5703(b)(2)(B), the floor stocks tax applies to those articles.

### § 46.208 Unmerchutable articles.

Articles that the dealer holds for return to a supplier because of some defect are not subject to the floor stocks tax. However, the dealer must segregate any such unmerchutable articles and include them in a separate section of the inventory record. The dealer cannot include as unmerchutable any items that may be held because of poor market demand or to reduce the dealer's inventory. If, for any reason, the tobacco products or cigarette papers or tubes that were determined to be unmerchutable are not subsequently returned or destroyed, the dealer must file an additional floor stocks tax return and pay tax on such products plus any applicable penalties and interest.

(Approved by the Office of Management and Budget under control number 1513-0129)

### § 46.209 Articles in vending machines.

There is no exemption for articles in vending machines. They are subject to the floor stocks tax and must be included in the dealer's inventory record.

### § 46.210 Articles marked "not for sale" or "complimentary".

Articles marked "not for sale" or "complimentary" that are part of a sale (for example, buy two packs and get one pack free) are subject to the floor stocks tax and must be included in the physical or record (book) inventory as provided in §§ 46.202 or § 46.203.

## TAX LIABILITY CALCULATION

### § 46.221 Floor stocks tax rates.

| Product                | Floor stocks tax rate  |
|------------------------|------------------------|
| Small cigars .....     | \$48.502 per thousand. |
| Small cigarettes ..... | 30.83 per thousand.    |

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| Product                                       | Floor stocks tax rate                    |
|---|--|
| Large cigarettes 6½ inch or less in length.   | 64.74 per thousand.                      |
| Large cigarettes more than 6½ inch in length. | 30.83 per thousand units of length.      |
| Snuff .....                                   | 0.925 per pound.                         |
| Chewing tobacco .....                         | 0.3083 per pound.                        |
| Pipe tobacco .....                            | 1.7342 per pound.                        |
| Roll-your-own .....                           | 23.6831 per pound.                       |
| Cigarette papers .....                        | 0.0193 per 50 papers or fraction thereof |
| Cigarette tubes .....                         | 0.0386 per 50 tubes or fraction thereof. |

### § 46.222 Determination of amount of tax due.

After the dealer has taken the inventory, the dealer must convert the inventory quantities to taxable units using the table below. For tobacco products, round the quantities to two decimal places. The dealer must then apply the applicable tax rate for each type of taxable article using the table in § 46.221 to determine the amount of tax due.

| Product   | Computation  |
|---|--|
| Small cigars weighing not more than 3 pounds thousand.                                    | Divide number of cigars by 1,000 and multiply by the small cigar tax rate.   |
| Small cigarettes weighing not more than 3 pounds thousand.                                | Divide number of cigarettes by 1,000 and multiply by the small cigarette tax rate.   |
| Large cigarettes weighing more than 3 pounds thousand, measuring 6½" or less in length.   | Divide number of cigarettes by 1,000 and multiply by the large cigarette tax rate.   |
| Large cigarettes weighing more than 3 pounds thousand, measuring more than 6½" in length. | Mathematically adjust the number of large cigarettes using the instructions below.* Divide the adjusted number of large cigarettes by 1,000 and multiply by the small cigarette tax rate.  |
| Snuff .....   | Multiply the total in pounds by the snuff tax rate.  |
| Chewing tobacco ...   | Multiply the total in pounds by the chewing tobacco tax rate.  |
| Pipe tobacco .....  | Multiply the total in pounds by the pipe tobacco tax rate.   |
| Roll-your-own .....   | Multiply the total in pounds by the roll-your-own tax rate.  |
| Cigarette papers 6½" or less in length.   | Divide the number of cigarette papers by 50, add 1 if there is a remainder, and multiply that number by the cigarette paper tax rate.  |
| Cigarette papers more than 6½" in length.   | Mathematically adjust the number of cigarette papers using the instructions below.* Divide the adjusted number of cigarette papers by 50, add 1 if there is a remainder, and multiply that number by the cigarette paper tax rate. |

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| Product                                  | Computation   |
|--|---|
| Cigarette tubes 6½" or less in length.   | Divide the number of cigarette tubes by 50, add 1 if there is a remainder, and multiply that number by the cigarette tube tax rate.   |
| Cigarette tubes more than 6½" in length. | Mathematically adjust the number of cigarette tubes using the instructions below.* Divide the adjusted number of cigarette tubes by 50, add 1 if there is a remainder, and multiply that number by the cigarette tube tax rate. |

\*Large cigarettes, cigarette papers, and cigarette tubes more than 6½ inch in length are counted as multiple units. Each 2¾ inch or fraction of the length is counted as a separate taxable unit. For each different length of product in this category, divide the length by 2¾ inch and add 1 to the result if there is a remainder. Multiply the number of cigarettes, cigarette papers, or tubes of that length by the resulting number.

### § 46.223 Tax credit.

The dealer is allowed a credit of up to \$500 against the total floor stocks tax. However, controlled groups are eligible for only one credit for the entire group. The credit may be divided equally among the members or apportioned in any other manner agreeable to the members.

### FILING REQUIREMENTS

#### § 46.231 Floor stocks tax return.

Form 5000.28T09, 2009 Floor Stocks Tax Return—Tobacco Products and Cigarette Papers and Tubes, is available for printing through the TTB Web site (<http://www.ttb.gov>) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Suite 8002, Cincinnati, OH 45202-5215.

#### § 46.232 Preparation of floor stocks tax return.

The dealer must complete and file the floor stocks tax return in accordance with the instructions for the form.

#### § 46.233 Payment of floor stocks tax.

(a) *Electronic funds transfer.* If the dealer pays any other excise taxes collected by TTB by electronic funds transfer, then the dealer must also send the payment for the floor stocks tax by an electronic funds transfer. Other dealers may voluntarily elect to pay the floor stocks tax by electronic funds transfer. Electronic funds transfers of floor stocks tax must be received on or before July 31, 2009.

(b) *Check or money order.* Dealers not paying floor stocks tax by electronic fund transfer must pay by a check or money order sent with Form 5000.28T09.

#### § 46.234 Tax payment deadline.

Section 701 of Public Law 111-3 specifies a tax payment deadline of August 1, 2009. However, section 5703(b)(2)(E) of the Internal Revenue Code requires that when a due date falls on a Saturday, Sunday or a legal holiday, the preceding day that is not a Saturday, Sunday or legal holiday will be the due date. Therefore, the floor stocks tax is due on July 31, 2009, since August 1, 2009, falls on a Saturday.

#### § 46.235 Filing requirements for multiple locations.

The dealer may file a consolidated return if all locations or places of business have the same employer identification number. The dealer also has the option of filing a separate return for each place of business or location.

#### § 46.236 Articles in a warehouse.

(a) Articles warehoused at one or more locations must be reported on the tax return representing the location where the articles will be offered for sale.

(b) Articles offered for sale at several locations must be reported on a tax return filed by one or more of the locations. The articles can be reported by a single location or apportioned among several locations.

#### § 46.237 Controlled group member.

If the dealer is a member of a controlled group, but has its own employer identification number, the dealer must file a separate floor stocks tax return. The dealer may take the tax credit referred to in § 46.223 if it is apportioned to the dealer as a member of the controlled group.

### RECORDS

#### § 46.241 Required records.

The dealer must maintain:

- (a) Inventory records;
- (b) Tax computation records;
- (c) Names, addresses and employer identification numbers of all controlled group members, if applicable;